

VINICK LAW FIRM  
SHARON R. VINICK (State Bar No. 129914)  
350 Sansome Street, Suite 300  
San Francisco, CA 94104  
Telephone: 415-722-4481  
Facsimile: 415-276-6338

JEAN K. HYAMS, ESQ., State Bar No. 144425  
DARCI E. BURRELL, ESQ., State Bar No. 180467  
BOXER & GERSON, LLP  
300 Frank H. Ogawa Plaza, Suite 500  
Oakland, California 94612  
Telephone: (510) 835-8870  
Facsimile: (510) 835-0415  
E-mail: [courtmail@boxerlaw.com](mailto:courtmail@boxerlaw.com)

Attorneys for Plaintiff in Intervention

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

THE DEPARTMENT OF FAIR  
EMPLOYMENT AND HOUSING,

Plaintiff, and

STEVEN J. CARAUDDO,

Plaintiff - Intervenor,

v.

LUCENT TECHNOLOGIES, INC., AND  
DOES 1 THROUGH 20

Defendants.

) Case No.: C 07-3747 PJH

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) **PLAINTIFF-INTERVENOR STEVEN J.**  
) **CARAUDDO'S MEMORANDUM OF POINTS**  
) **AND AUTHORITIES IN OPPOSITION TO**  
) **DEFENDANT'S PARTIAL TO MOTION TO**  
) **DISMISS**

)

) DATE: April 16, 2008

) TIME: 9:00 a.m.

) COURTROOM 3 - 17<sup>th</sup> Floor

) Judge Phyllis J. Hamilton

)

) TRIAL DATE: March 30, 2009

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## I. INTRODUCTION

Defendant Lucent Technologies Inc. ("Lucent") has moved to dismiss the wrongful termination claim of Plaintiff and real party in interest Steve Carauddo ("Carauddo") based on the statute of limitations. Lucent brings this motion without identifying the applicable legal doctrines, explaining the choice of law, or citing the relevant cases. This motion should be denied because (1) the motion for leave to intervene was filed within the applicable limitations period; and (2) the wrongful termination claim would be saved by the relation back doctrine were the statute calculated by reference to the complaint filing date.

## II. STATEMENT OF FACTS

Plaintiff Department of Fair Employment and Housing ("DFEH") filed suit in state court on June 27, 2007. Subsequently, on July 20, 2007, Lucent removed this case to federal court. On November 5 and 27, 2007, Carauddo filed a motion to intervene. After hearing and the Court's order granting intervention, Caruaddo filed a complaint-in-intervention on February 20, 2008.

As set forth in his complaint-in-intervention, Caruaddo was terminated on January 27, 2006. The motion to intervene was filed within two years of the date of termination; the complaint, which could not be filed without leave of Court, was filed after the two year anniversary.

## III. LEGAL ARGUMENT

### A. Carauddo's Claim is Timely Because the Motion to Intervene was Filed within the Limitations Period

In diversity cases, the application of the statute of limitations for state common law claims is governed by state law. *Guaranty Trust Co. v. York*, 326 U.S. 99, 112 (1945) ("The source of substantive rights enforced by a federal court under diversity jurisdiction, it cannot be said too often, is the law of the States.") Under California law, when a party intervenes in a case, the filing of an application to intervene suffices to commence an action for the purpose of calculation whether the action has been

1 timely filed under the applicable limitations period. *Alphonzo Bell Corp. v. Bell View Oil Syndicate, et*  
 2 *al.*, 24 Cal. App. 2d 587, 614 (1938) (“The Union Oil Company had appeared, filed a petition for leave  
 3 to intervene, but as actual leave was not granted by the court until after the expiration of the one hundred  
 4 eighty days, the right of the Union Oil Company could not be prejudiced by the failure of the court to  
 5 act upon the application prior to the expiration of the one hundred eighty days.”)

6 Thus, by filing his motion to intervene within the applicable limitations period, Carauddo  
 7 complied with California’s two-year statute of limitations.

8 B. Alternatively, the Fourth Cause of Action is Timely Under the Relation-Back Doctrine

9 The relation-back doctrine is integral to the application of California’s statute of limitations in  
 10 a situation where an intervenor joins after the expiration of the statute of limitations. Assuming,  
 11 *arguendo*, that this were the case here, this Court would look to California law to analyze whether the  
 12 Fourth Cause of Action relates back to the original complaint. A number of California cases have  
 13 applied the relation-back doctrine in situations where an intervenor brings claims after the expiration of  
 14 the limitations period. See *Quiroz v. Seventh Avenue Center, et al.*, 140 Cal. App. 4<sup>th</sup> 1256 (2006)  
 15 (Survivor sought to intervene in elder abuse case after running of the statute of limitations); *Andersen*  
 16 *v. Barton Memorial Hospital, Inc.*, 166 Cal. App. 3d 678 (1985) (Additional heir moved to intervene  
 17 in wrongful death action).

18 “In order for the relation-back doctrine to apply, ‘the amended complaint must (1) rest on the  
 19 same general set of facts, (2) involve the same injury, and (3) refer to the same instrumentality, as the  
 20 original one.’” *Quiroz*, 140 Cal. App. 4<sup>th</sup> at 1278, quoting *Norgart v. Upjohn Co.*, 21 Cal.4th 383, 395  
 21 (1999).

22 Carauddo’s assertion of the Fourth Cause of Action for wrongful termination in violation of  
 23 public policy passes the *Quiroz* test. The facts supporting this cause of action also undergird the First  
 24 Cause of Action alleged in the original complaint filed by the Department of Fair Employment and  
 25 Housing (“DFEH”). Essentially, Mr. Carauddo alleges he was performing the essential functions of his  
 26 assigned position until Lucent decided to terminate him because of his perceived disability. The DFEH’s  
 27 First Cause of Action (repeated in Carauddo’s complaint) pleads termination based on disability under  
 28

1 the Fair Employment and Housing Act, Cal. Govt. Code § 12940; Carauddo's Fourth Cause of Action  
 2 is for wrongful termination in violation of the public policy articulated in that same statute. As for  
 3 injury, the damages suffered by Mr. Carauddo as a result of his termination are identical as between the  
 4 discrimination and wrongful termination claims – economic loss and emotional distress. Punitive  
 5 damages are also available under both theories. Finally, the instrumentality of the wrong,  
 6 termination from employment, is identical in both causes of action.

7 In the only opinion located by Plaintiff that involved a real-party-in-interest who intervened in  
 8 an employment discrimination lawsuit brought by a government agency, the District Court for the  
 9 District of Delaware concluded that a claim for intentional infliction of emotional distress related back  
 10 to the statutory discrimination claims asserted by the Equal Employment Opportunity Commission. See  
 11 *EEOC v. Avecia, Inc.*, C.A. No. 03-320-SLR, 2003 U.S. Dist. LEXIS 19325 (D.Del. October 23, 2003)

12 Lucent has had ample notice of and opportunity to prepare to defend against the wrongful  
 13 termination claim of Carauddo, which relates back in all respects to the claims initially raised in the  
 14 complaint filed by the DFEH.

### 15 III. CONCLUSION

16 For the foregoing reasons, Plaintiff-Intervenor respectfully submits that Lucent's motion to  
 17 dismiss should be denied.

18 Dated: March 26, 2008

Respectfully submitted

19 BOXER & GERSON

20  
 21 By: /s/  
 22 Jean K. Hyams

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 27 <sup>1</sup> The claim for intentional infliction was ultimately dismissed on other grounds.